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Current Topics.

Laws of War.

THERE can be no two opinions about the premeditated treachery which marked Japan's entry into the war. With regard to the legality, in the present unsettled state of international law, of the method of commencing war without a declaration, this is at least doubtful. Even in primitive societies a declaration of war was not infrequently considered a moral preliminary, as is shown in Deuteronomy ch. 20 v. 10, where it is enjoined: "When thou comest nigh unto a city to fight against it, then proclaim peace unto it . . . And if it will make no peace with thee, but will make war against thee, then besiege it." The opinion of Grotius, too, was that a formal declaration was necessary in order to begin a war. As late as 1907, in Hague Convention III, all the signing States recognised that as between the contracting parties hostilities ought not to commence "without previous and explicit warning in the form either of a reasoned declaration of war or an ultimatum with conditional declaration of war." Japan, however, established her own precedents by attacking Port Arthur the day before declaring war in the Russo-Japanese War, and even then declared war in the form of a proclamation to her own subjects. Her more recent conduct of the protracted Chinese "incident" illustrates once more the reluctance of the Mikado's Government to abandon the cloak of peace when all its realities have been wantonly cast aside by their own acts. Germany has profited, not only by Japan's example, but by her own on occasions both before and including 1914. Her present rulers openly avow that it is part of their strategy to hit their enemies before they can themselves be attacked, and they cure the fallacy that the victims of their aggressions are not enemies until declaration of war by the invariable discovery of incriminating documents after the event. These are not the materials from which international law and order are built. Perhaps they prove the futility of making laws of war rather than of peace, for those who are determined to attempt to gain their ends by war are not usually inclined to observe any laws. Paradoxically enough, we are fighting a war to restore a world in which it will be possible to abandon war as an instrument of national policy.

Offices of Profit under the Crown.

THE Arthur Jenkins Indemnity Act, 1941, which received the Royal Assent on 10th December, was briefly explained by the Lord Chancellor on the motion for its second reading in the House of Lords on the same day. He said that our law dealing with offices of profit and with the circumstances in which a member of Parliament loses his seat if he accepts an office of profit, was exceedingly complicated and in some parts technical and obscure. Quite recently there had been a committee of the House of Commons presided over by Sir DENNIS HERBERT which had been investigating this whole question, and recently it had made a most valuable report. To give one example of how strange the present law was, it might surprise some people to learn that an unpaid Lord of the Treasury held an office of profit because the nature of the post was such that a payment might be attached to it. The purpose of the measure was to grant relief, in accordance with Parliamentary practice, in the rare case in which a member of Parliament had run the risk of incurring heavy penalties through sitting and voting in the House of Commons. His lordship did not know whether that had been done. Mr. JENKINS, while a member of Parliament, had been nominated as chairman of a local appeal board by both the employers and workpeople in connection with a particular ordnance factory, and having been offered the appointment, he accepted it. There was provision that on each occasion on which the chairman sat, he was entitled to receive a small fee from public funds, though in fact Mr. JENKINS had declined to take a penny piece. The office was, in fact, the chairmanship of a local appeal board under the Essential Work (General Provisions) Order, 1941. The House of Commons Disqualification (Temporary Provisions) Act, 1941, as was pointed out by the Financial Secretary to the Treasury in the Commons on 9th December, gave no help in the present case, as all that Act did was to exempt from the operation of the general law with regard to offices of profit under the Crown members who had accepted appointments between the outbreak of war and the passing of the Act. In subsequent cases that Act provided that if the First Lord of the Treasury issued his certificate to a member of Parliament, he might then continue in the office, but in this case Mr. JENKINS had technically vacated his seat. The only moral to be drawn from this slight expenditure of Parliamentary time is that it is of some importance that the necessary legislation to carry out the proposals in the Select Committee's report should be passed as soon as Parliamentary time is available.

Temporary Civil Servants and Income Tax.

IN the House of Commons on 4th December, Mr. SORENSEN asked the Financial Secretary to the Treasury whether he was aware of the concern and hardship arising from the incidence of the demand for income tax from temporary civil servants. The answer was that where a temporary civil servant owes income tax in respect of a former employment, it is the practice to allow the tax outstanding to be spread over a considerable period. The spreadover would be allowed automatically, and the period would depend on the relation between the tax outstanding and the amount of the tax falling to be deducted in respect of current liability. The general question of the assessment of temporary civil servants, it was stated, has recently been under review by the Board of Inland Revenue, with the object of removing any cause for complaint. In particular, instructions have been issued to extend to temporary civil servants the rule that obtains in outside employments under which the net pay, after deduction of tax, is not to fall below a certain minimum. The Financial Secretary to the Treasury said that it was hoped, as a result of other administrative changes in contemplation, to ensure that the deduction of the tax due in respect of civil service pay would not be delayed, but would come into force as early as possible after entry into the service. The trouble arises owing to the fact that before temporary civil servants went into the service they paid income tax on the income of the previous year, but on entering the service they become liable to pay tax on the income of the present year. In many cases this is a grievously heavy burden of temporary double taxation, and the fact that there will ultimately be a tax-free year is small compensation in the present uncertain state of the duration of the war. The new arrangements promise a substantial amelioration of the position.

Smaller Cheque Forms.

A GOVERNMENT step in the direction of further paper economy was announced in the House of Commons on 9th December by the Chancellor of the Exchequer, in the course of answering a question with regard to the size of cheques. The Chancellor said that arrangements had now been made between the Paper Control, the banks and the printers, by which the size of standard cheques would be limited forthwith to stated maxima. Maximum sizes had also been fixed for machine-accountancy cheques and other non-standard cheques printed from existing blocks, but in the case of new cheques, or where the design or type of cheque is changed, these special cheques would have to conform to the maximum sizes for standard cheques. Existing stocks of partly or wholly printed cheques in the hands of printers or of the banks may be used. The Chancellor said that he would bear in mind the possibility, when these arrangements were made, of preventing expensive printing at the same time. Details of the maximum sizes were subsequently circulated in the Official Report. The maximum sizes of standard cheques will be (*a*) for single signatures, 6 inches by 3 inches; (*b*) for two signatures or more, 6 inches by 3½ inches, plus a maximum of 2½ inches for counterfoils and binding. The maximum sizes of special, etc., cheques will be (*a*) cheques for use with machine-accountancy, 9¼ inches by 4 inches overall; (*b*) specially printed cheques, 10¾ inches by 4½ inches overall. The new arrangements should secure substantial economies, but should not be regarded as the ultimate limit of thrift, as there is no legal impediment to still smaller cheque forms being used, or indeed to the whole of the cheque being written on a not too decrepit piece of paper.

Fire Prevention Exemptions.

OCCUPIERS of business premises should acquaint themselves with the alterations in the exemptions set out in the Civil Defence Duties (Compulsory Enrolment) (No. 3) Order, 1941, dated 18th November, 1941 (S.R. & O., No. 1834), with regard to the granting of certificates under the Civil Defence Duties (Compulsory Enrolment) Order, 1941, as amended by the Civil Defence Duties (Compulsory Enrolment) (No. 2) Order, 1941. The certificate, which must be in the prescribed form, must be signed by the occupier of the business premises, or by a person authorised by him with the approval of the appropriate authority under the Fire Prevention (Business Premises) (No. 2) Order, 1941, or by a person of a class so authorised, and if the certificate is in respect of several persons, the person by whom it is signed must send it to the local authority. The certificate is in respect of any person registered by the local authority under the Compulsory Enrolment Order and states that he has undertaken or is required to perform, outside his working hours, at premises to which the Fire Prevention (Business Premises) (No. 2) Order applies, fire prevention duties under arrangements in force for those premises under the order for periods amounting in the aggregate to such number of hours in a period of four weeks as may be specified in the certificate. If the number of hours so specified exceeds thirty (thirty-six in the previous order), the registered person is to be exempted from enrolment, or released if already enrolled. If the number of hours so specified exceeds eighteen but does not exceed thirty (twenty-four to thirty-six in the previous order), the periods for which he is required to perform duties by virtue of his enrolment must not in the aggregate exceed twelve hours in each period of four weeks. If the number of hours specified is more than six but not more than eighteen (twelve to twenty-four previously), the periods for which he is required to perform duties by virtue of his enrolment must not exceed in the aggregate twenty-four hours in each period of four weeks. Finally, if the number of hours specified is not more than six, the period for which he is required to perform duties by virtue of his enrolment must not in the aggregate exceed thirty-six hours in each period of four weeks. Occupiers should refer to the order for other amendments of the law with regard, for example, to the amended definition of "working hours" and the method of calculating the maximum number of hours for which a person would have to undertake fire prevention duties at business premises outside working hours. It is interesting to note that of 4,950,000 men between eighteen and sixty who have registered under the Compulsory Enrolment Order, about three out of four are claiming exemption on various grounds, a large proportion of them on grounds of present service in fire watching at business premises.

Reinstatement of Ex-Service Employees.

A COMMON illusion was dispelled at the Ipswich Police Court on 24th November, when a fine of £5 was imposed on a limited company for failing to reinstate a discharged soldier in employment. The company was also ordered to pay nine weeks' wages to the ex-soldier. The facts, as outlined by the prosecution, which was undertaken on behalf of the Ministry of Labour and National Service, were that the employee was called up in November, 1940, but was discharged in April, 1941, as being unfit for military service. Having applied for reinstatement in his former position, he was told that there was no vacancy. It was said on behalf of the defendant company that they did not understand the law on the subject, but had imagined that the reinstatement was intended to apply only when the war was over. There was, in fact, no work waiting for the ex-soldier, and no one had supplanted him in his job. The actual legal position and the defences available to an employer defendant are set out in s. 14 of the National Service (Armed Forces) Act, 1939. That section enacts the duty of the employer of a person called to service in the armed forces to reinstate him at the termination of his service in an occupation and under conditions not less favourable to him than those which would have been applicable to him had he not been so called. The maximum penalty is a fine of £50, and the convicting court may order the defaulting employer to pay a maximum of twelve weeks' remuneration to the ex-service man. Among the defences which may be raised by the employer are that by reason of a change of circumstances (other than the engagement of some other person to replace him)—(*a*) it was not reasonably practicable to reinstate him; or (*b*) his reinstatement in an occupation and under conditions not less favourable to him than those which would have been applicable to him had he not been called from his civil employment for service connected with the present emergency, was impracticable, and that the employer has offered to reinstate him in the most favourable conditions reasonably practicable. There is no logical reason why it should be imagined that the section does not apply until the end of the war, but the illusion seems to prevail in some quarters, and prosecutions like that at Ipswich help both to enforce and to emphasise the law.

Recent Decisions.

IN *The Glencarn* on 4th December (*The Times*, 5th December) the President of the Probate, Divorce and Admiralty Division held, in a case where cargo had been seized as prize after discharge, having been shipped at ports in Japan and China for carriage to Hamburg and the ship having called *en route* at London on 23rd August, 1939, where the owners decided to discharge the cargo and abandon the voyage, that it was implicit in the nature of the owners' claim that it was the freight itself and not any profit to be made out of the freight which was primarily the basis of compensation. The bill of lading itself, moreover, provided that in such a case only a proportionate part of the freight if not prepaid should be repayable. The rule laid down by Sir SAMUEL EVANS in *The Juno* [1916] P. 169, precluded the taking of anything in the nature of a profit and loss account.

In *Sea and Land Securities, Ltd.* v. *William Dickinson & Co.* on 8th December (*The Times*, 9th December), ATKINSON, J., held that in the case of a time charter-party, freight was not payable for that part of the time during which the hirers had no use of the vessel by reason of the fitting of degaussing apparatus to the vessel by the owners, in consequence of an urgent representation from the Admiralty.

In *Charente Steamship Co., Ltd.* v. *Wilmot* (*Inspector of Taxes*) on 9th December (*The Times*, 10th December), the Court of Appeal (GREENE, M.R., and LUXMOORE and DU PARCQ, L.JJ.) held that where a company sold three ships and the price of one of them together with the total income tax allowances for wear and tear were less than the original cost of the vessel, but more in the case of the other two, the company was entitled to an allowance in respect of the first without bringing anything into account in respect of the surpluses on the other two ships (see r. 7 of the Rules applicable to Cases I and II of Sched. D to the Income Tax Act, 1918).

In *Salisbury Jones* v. *Southwood & Co.* on 9th December GODDARD, L.J., sitting in the King's Bench Division, held that the Statute of Frauds could be set up in reply to a set-off by the defendant, following *Rawley* v. *Rawley* (1876), 1 Q.B.D. 460, as a set-off was equivalent to a cross-action, and therefore the rule that the Statute of Frauds must be used as a shield and not as a sword did not apply.

In *Smart Brothers, Ltd.* v. *Ross* on 12th December (*The Times*, 13th December), the Court of Appeal (MACKINNON and CLAUSON, L.JJ, GREENE, M.R., dissenting), held that the leave of the appropriate court must be obtained, under s. 1 (2) (*a*) (ii) of the Courts (Emergency Powers) Act, 1939, to retake goods from the hirer of goods let under a hire-purchase agreement, where the owner had agreed with the hirer without any pressure on either side to rescind the hire-purchase agreement and to a refund of part of what the hirer had paid.

Town Planning Schemes and User.

WAR conditions have from time to time compelled the owners of businesses and factories to seek new accommodation in districts which in normal times they would never have contemplated; and cases have occurred in which those concerned, having taken suitable premises, have found themselves taken to task for infringing a local town planning scheme. For many businesses and some light industries can, as far as physical conditions go, be carried on in residential districts, and even in dwelling-houses; and the small business man or small manufacturer is apt to forget in the stress of the moment whatever he may have heard about "zoning."

It is fair to say that a casual perusal of the Town and Country Planning Act, 1932, might well leave the reader with the impression that it is not much concerned about user. It does, in fact, achieve far more in this direction than did its 1925 predecessor; but the first section, meant to define the scope of planning schemes, does not mention the word "user," though it speaks somewhat vaguely of "development" and "amenity." The former is, however, dealt with in the interpretation section (s. 53); it "includes any building operations or rebuilding operations, and any *use* of the land or any building thereon for a purpose which is different from the purpose for which the land or building was last used," and it may be mentioned here that by proviso (ii) "the use of land within the curtilage of a dwelling-house for any fresh purpose other than building operations shall not be a development of that land if the purpose is *incidental to* the enjoyment of the dwelling-house as such." The section does not attempt to define "amenity," which, as Bankes, L.J., said in *Re Ellis and Ruislip-Northwood Urban Council* [1920] 1 K.B. 343 (C.A.), "is a term of such very wide significance"; to Scrutton, L.J., it appeared to mean "pleasant circumstances or features, advantages." Somewhat indirectly, then, the "scope" provision sanctions restrictions on user; and the same may be said of s. 11, dealing with contents of schemes: by subs. (1) every scheme shall contain such provisions as are necessary or expedient for prohibiting or regulating the *development* of land in the area, etc., but the matters to be dealt with "in particular" (Sched. II) do not include user. Section 12 (1) (*d*), which concerns provisions which *may* be inserted in a scheme with respect to buildings and building operations, is, however, quite clear about it: provisions may impose restrictions "upon the manner in which buildings may be used . . ." Thus it comes about that the model clauses devote a good deal of attention to user, Pt. IV of the 1937 issue having much to say on the subject. It is cl. 30 that contains the provisions for "use zones," by which whole areas may be limited to "residential," "general business," "special business," "industrial," etc., etc., but distinctions are drawn between purposes for which buildings may be used without the consent of the council, those for which consent is necessary, and those for which no consent may be granted. While cl. 31 of the model clauses provides for prohibiting the use of land in specified use zones for specified uses other than the existing use, on the ground of "serious detriment to the neighbourhood," without the consent of the council, etc., etc.

This indicates the position in which the newcomers may find themselves. Though they themselves consider an empty dwelling-house good enough for their purposes, which may be the *prima facie* unobjectionable business of, say, producing and marketing small "handicraft" articles, it is highly advisable that proper inquiries should be made as to town-planning schemes, and that any consent which should and may and can be given should be sought. Failing this, their apparently innocuous conduct may lead to serious trouble. This brings us to an examination of the means of enforcing the scheme.

These are to be found in s. 13 of the Act, a section containing a great deal more than did s. 7 of the 1925 Act, which it replaces. The latter provided merely for the removal and alterations of buildings and the execution of works omitted, and for the recovery of expenses. Thus, unauthorised user, not being tangible, was not provided for. In s. 13 (1) of the 1932 statute paras. (*a*) to (*e*) now set out elaborately what the responsible authority may do. All except para. (*c*) prescribe drastic action, such as demolition and reinstatement, as did the old s. 7; it is the third of the five which deals with user and necessarily authorises a different kind of remedy: "where any building or land is being used in such a manner as to contravene any provision of the scheme, prohibit it from being so used."

From this it appears that the offender has another chance before he is liable to penalties. But when subs. (2) goes on to enact: "before taking any action under this section the responsible authority shall serve a notice in the prescribed manner on the owner and occupier . . . specifying the nature of, and the grounds upon which, they propose to take that action," one may well ask oneself, is the prohibiting under subs. (1) (*c*) the taking of action under the section? In my submission, it is not; I incline to the view that the draftsman, who was engaged upon a minor alteration of the old s. 7 ("after giving such notice as may be provided by a town planning scheme"), was not thinking of subs. (1) (*c*) at all; the provision for specifying the nature of the action is intended to give the defaulter one more chance of remedying the breach of the scheme himself, and to give notice that one proposes to prohibit what was always prohibited would be carrying this principle too far. But the seventh and last subsection of s. 13 (subss. (3) to (6) are all concerned with the service of notices and the right to dispute them and method of disputing them) affords what is perhaps a stronger argument to support the view that prohibiting offending user under subs. (1) (*c*) need not be preceded by a notice specifying nature and grounds of intention, for this last subsection deals exclusively with user and provides, simply, for pecuniary penalties on summary conviction of using a building or land in a prohibited manner. The maximum fine is £50 and the offender is liable to a further penalty of not exceeding £20 in respect of each day on which he uses the building or land in the prohibited manner after conviction.

The section as a whole may be said to lack balance, and it is perhaps a pity that there is no provision for a prescribed manner of conveying a prohibition under subs. (1) (*c*) as there is of serving a notice under subs. (2). Would it, for instance, be sufficient for someone in the town clerk's office to ring up the occupier and say that the council had resolved to prohibit the user? However, it is at all events clear that some such message must be transmitted before proceedings can successfully be launched, for the penalties imposed by subs. (7) are imposed on "a person who uses . . . in a manner prohibited *under this section*," not "under the scheme."

Criminal Law and Practice.

Milk Prosecutions.

PROSECUTIONS for selling milk deficient in milk-solids furnish by no means the easiest type of case which come before the magistrates. A recent appeal to the Divisional Court (*Churcher* v. *Reeves*, *The Times*, 6th November) illustrated the difficulty of these cases and at the same time cleared away a misunderstanding as to the law on the subject.

Section 3 (1) of the Sale of Food and Drugs Act, 1938, provides that if a person sells to the prejudice of the purchaser any food or drug which is not of the nature, or not of the substance or not of the quality, of the food or drug demanded by the purchaser he shall be guilty of an offence. By art. 2 of the Sale of Milk Regulations, 1939, milk containing less than 8·5 per cent. of milk-solids other than milk-fat is presumed not to be genuine until the contrary is proved.

It was proved at the hearing that on 16th January, 1941, the accused delivered to a company with whom he was under a contract to sell milk 36½ gallons of milk in four churns. The inspector took a sample from each churn as soon as the churns were unloaded from the lorry on which they arrived. The analysis by the public analyst showed a falling short of the statutory standard in the case of each sample.

It was, however, proved that during the winter 1940–41 the cows from which the milk was drawn were fed on hay, kale and roots, and that the amount of dairy cake, the chief concentrated food for cows allowed to be bought by the accused at the material time, was 66 per cent. of the quantity bought in the year before the war, although during the later period there were more cows in milk. Lack of dairy cake, unless made up for by other goods, would tend to reduce the quantity and quality of the milk.

On 15th January, the milk, drawn into open buckets, was carried to the dairy, put into a tank, run over a cooler and passed directly into churns. The tank was not under continuous observation and the churns were in the dairy from 5 p.m. on 15th January until 6 a.m. on 16th January. Lids were half placed on the churns and no one watched them overnight. The milking took place on the morning of 16th January in the same way, and all the churns were labelled and sent by lorry to the purchasers' premises. The accused denied that water was added to the milk. The Hove justices dismissed the information.

The Lord Chief Justice said that there was evidence on which the justices could reach their conclusion in the fact that the dairy cake was the ordinary fodder used for cows and that lack of it reduced the quality of the milk. There was no authority for the proposition that the contrary could be proved only by showing impossibility of access to the milk by evilly disposed persons. This would lay down an unnecessarily high standard of proof. *Jenkins* v. *Williams*, 55 T.L.R. 639, decided merely that where the defence of

non-access to the milk was relied on, it must be proved up to the hilt. *Kings* v. *Merris* [1920] 3 K.B. 566, also was no authority for saying that the only evidence to discharge the burden of proof on the defendant was impossibility of access to the place where the milk was kept. The appeal was dismissed.

Kings v. *Merris* was concerned with the same regulation in the 1901 Milk Regulations as reg. 2 of the 1939 regulations referred to above. In that case, however, no evidence was given by the defendant to show that the milk was in the same condition when sold as it was when it came from the cows, nor did he put in any analyst's certificate. A pharmaceutical chemist was called for the defence, who said that milk varied considerably without being interfered with, that the standard of the Board of Agriculture was low, and that the pasture in the district was poor owing to the chemicals in the soil from the manufactures carried on nearby. The justices held that no offence had been committed. Lord Reading, allowing the appeal, said : " Unless there is evidence to satisfy the justices that there has been no adulteration by the addition of water or no abstraction of the milk solids, or, in other words, that the milk sold is the milk as it came from the cow, there must inevitably be a conviction." His lordship held that there was no evidence to rebut the presumption created by the regulations.

In *Jenkins* v. *Williams* (1939), 83 SOL. J. 499, the same regulation was concerned. The milk was drawn from the cows in the morning and there was evidence that the previous night was wet and cold, a fact which would be likely to reduce the amount of fat in the milk of the cows. There was evidence also that part of the milk was the fore milk of two cows which were suckling calves, and that that would reduce the proportion of butter fat. The milk was placed in a serving can and taken on a milk round to approximately fifteen customers. There was no one in charge of the milk cart while the dairyman served customers. The justices dismissed the information, on the ground that the defendant had discharged his onus of proof. The Divisional Court allowed the appeal on the ground that " where the defence relied on is that . . . the milk which was sold was milk as it came from the cow, there must be a perfectly clear continuous and exhaustive tracing of the history of the milk up to the moment of sale," and that " here there were fifteen possibilities of tampering with the milk."

The latest decision prevents the law on this subject from taking a wrong turning through making cases and dicta on their own facts precedents for cases which are by no means similar. The regulation, as Bray, J., observed in *Hunt* v. *Richardson* [1916] 2 K.B. 446, 470, merely affects the mode of proof, and the sole question in these cases is whether the milk is genuine. In the recent case there was evidence which provided a satisfactory explanation of the deficiency. In the absence of such evidence it is quite true that the only way to prove the defendant's innocence is to prove mathematically complete non-access to the premises where the milk was kept at the material time. But it is a mistake for courts of summary jurisdiction to imagine that proof of this sort is essential in every case in which a deficiency is proved, and *Churcher* v. *Reeves* now clearly demonstrates this.

PRACTICE DIRECTION—CHANCERY DIVISION.

COURTS (EMERGENCY POWERS) ACTS, 1939–1941.

The Judges of the Chancery Division have given the following direction :

On and after the 1st January, 1942, the Title of an Originating Summons issued under the Courts (Emergency Powers) Acts shall be as follows :—

Under a Deed.

" In the matter of the Courts (Emergency Powers) Acts, 1939 to 1941
and
In the matter of a (*describe Instrument*) dated the 19
made between of the one part and
of the other part relating to (*describe property*)
Applicant A. B.
Respondent C. D.

Under a Debenture.

" In the matter of the Courts (Emergency Powers) Acts, 1939 to 1941
and
In the matter of a Debenture dated issued
by in favour of
Applicant A. B.
Respondent C. D. "

In applications by Mortgagees it is not necessary to refer in the Title to Further Charges.

If the Title is a Registered Title, insert in the Originating Summons the Title number and Entry number in the Charge Certificate and the county and parish where the property is situate.

A. H. Holland,
8th December, 1941. Chief Master.

Landlord and Tenant Notebook.

Furnished Lettings : Alienation.

A GOOD many people have had occasion to move quickly more than once since the war began ; the occasions not being limited to such events as air raids, but connected rather with the general and " total " character of this particular war. As a consequence, houses and flats have been let with little negotiation and without formality. In many cases the dwellings have been let furnished. And when the tenant has found it necessary to move again before the term expired, he has wanted to sub-let the place or assign his interest to another. There being no covenant to the contrary, is the landlord entitled to object ?

The answer is no. Any practitioner will appreciate this, and why. But it may be difficult to satisfy a client who is a landlord in the position described, and who views with alarm behaviour which he never contemplated, that this is the law ; and it is for this reason that the question is perhaps worth discussing.

The shortest approach would be *via* two authorities, one ancient and the other very recent. In *Hall* v. *Seabright* (1669), 2 Keb. 561, Twisdale, J., said : " If one doth licence another to enjoy his house till such a time, it is a lease " ; in *Swift* v. *Macbean and Another*, reported in *The Times* of 13th December, 1941, Birkett, J., held that an agreement for letting premises furnished created an estate by demise just as did an agreement for letting premises unfurnished.

This, of course, does not mean that the tenant does not become a bailee of the furniture comprised in the agreement for letting furnished premises. But, in the absence of agreement to the contrary, there appears to be nothing to prevent such a bailee from disposing of his rights to custody and use. He belongs to the third " sort " (distinguished by Lord Holt in *Coggs* v. *Barnard* (1703), 2 Ld. Raym. 907) : " when goods are left with the bailee to be used by him for hire." Of this class, it may be said that we have been told more about its duties than its rights, but by implication it seems clear that no restriction is imposed on the hirer's freedom to hire to anyone else (it may be remembered that chartered ships are often sub-chartered). Lord Holt himself says : " . . . the hirer is bound to use the utmost diligence, such as the most diligent father of a family uses ; and if he uses it he shall be discharged." This warrants the proposition that if the landlord has used such diligence in considering the desirability of a tenant to whom he lets furnished, all that he can expect is that the tenant will adopt the same standard. Many of the cases in which *Coggs* v. *Barnard* has been applied have concerned horses hired from livery stables ; in one of these, in which damage had been done while the animal was in charge of a servant, it was said : " the hirer was bound only to use reasonable care *to employ a competent servant* " (*Arben* v. *Fussell* (1862), 3 F. & F. 152).

It may be suggested that a distinction ought to be drawn between sub-letting and assigning : a landlord who lets his house furnished, and does not contemplate that the tenant will let to a third party, never dreams that he will actually hand over to someone else. But, apart from the fact that the assignor remains fully liable in law, an authority can actually be cited showing that a hirer (and this was under a hire-purchase agreement) can assign his interest (*Whiteley* v. *Hilt* [1918] 2 K.B. 808 (C.A.)).

The reluctance of courts to imply any restrictions on alienation in leases and tenancy agreements in general is well known ; one can begin with *Bruerton* v. *Rainsford* (1583), Cro. Eliz. 15 : " a lessee may assign." In *Doe d. Mitchinson* v. *Carter* (1798), Kenyon, C.J., said : " generally speaking, the grant of an estate carries with it all the legal incidents, and the grantee has a right to sell or convey it, unless he be controlled by the terms of his grant." In *Church* v. *Brown* (1808), 15 Ves. 258, Lord Eldon expressed himself strongly to the same effect ; but it might be mentioned that this attitude was largely the result of the refusal of the learned Chancellor's own court to entertain applications for relief against forfeiture on the ground of prohibited alienation. This policy was, it may be mentioned, endorsed by the legislature when passing the earlier Conveyancing Acts ; it was L.P.A., 1925, which first authorised relief in such cases.

Furnished Premises : Requisition and Frustration.

The question in issue in *Swift* v. *Macbean*, *supra*, was whether requisition of property which had been let furnished put an end to a tenancy under which it was held. The matter arose in this way : the defendants took a house, furnished, " for the duration." In March, 1941, the Ministry of Health took possession under Defence Regulations 51 and 53. The defendants were offered compensation which would leave them considerably out of pocket (£25 a year, as against £3 3s. a week). And in answer to a claim for rent they relied on the doctrine of frustration.

It was admitted that that doctrine did not apply to ordinary leases, i.e., leases comprising no furniture. This, of course, was thoroughly thrashed out in cases which arose out of the 1914–1918 war. There was first *Whitehall Court, Ltd.* v. *Ettlinger* [1920] 1 K.B. 680, a case of a block of flats requisitioned by the War Office: the defendant tenant was held liable for rent after the date when possession was taken by the authority concerned; and this decision was approved by the House of Lords in *Matthey* v. *Curling* [1922] 2 A.C. 180 (house taken possession of by same department, and destroyed by fire while in their possession and before term expired; tenant liable both for rent and for breach of repairing covenants).

Our County Court Letter.

Possession of Controlled Dwelling-house.

A CASE which was recently decided at Edmonton County Court (*Stone* v. *Childs*) before His Honour Judge Allchin raised some interesting points. The claim was for possession of a controlled dwelling-house. It was not disputed that the defendant was a desirable tenant in every way, but the plaintiff, who is serving in His Majesty's forces, wanted possession for his wife and small son. There were two contentions set up on behalf of the defendant: (1) that as the owner was serving in His Majesty's Forces, he could not be said to require the house for his own use and occupation within the meaning of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, Sched. I (*h*). What he required was possession for his wife and son, and to this the section did not apply; (2) that greater hardship would result to the defendant if an order for possession were made, as he had been unable to obtain alternative accommodation for himself and wife, and a friend who had been evacuated and was their lodger. His Honour, in giving judgment for the plaintiff, said that the case was an interesting one, and in the absence of any authority not free from doubt. He, however, considered that as the plaintiff intended to live in the house on those occasions when he came home on leave, he could be said to require the house for his own use and occupation within the meaning of the section. As to the question of hardship, His Honour said that once the plaintiff had established that he required the house for his own use, the burden was on the defendant to show that a greater hardship would result to the defendant by an order for possession being granted than would result to the plaintiff from a refusal to grant such possession. From the facts of the case His Honour thought that there was little to choose between the resulting hardships of both parties, but he considered on the whole that the defendant had not discharged the burden, as from his evidence it appeared that he was in the employment of a railway company, and had a good salary with travelling privileges, and was thus in a position to obtain accommodation elsewhere. His Honour therefore gave judgment for possession.

Foul Play at Football.

IN a recent case at Blackburn County Court (*Hamilton* v. *Healless*) the claim was for damages for assault. The plaintiff was a police constable, and, on the 12th March, 1940, he had played for the Blackburn Police in a football match against the Air Raid Wardens—in aid of the Red Cross. The plaintiff's case was that, when making for the opponents' goal, he was deliberately kicked by the defendant. The subsequent fall caused the plaintiff's arm to be broken in two places, and a further operation would be necessary. If the arm had recovered normally, the plaintiff would have passed over the incident, but the prolonged disability was the reason for the delay in suing. The referee's evidence was that the kick was a deliberate foul. He had abandoned the game on seeing the plaintiff's condition. The defendant's case was that he had no feeling against the plaintiff, and there had been no suggestion of rough play. When the ball was about four yards ahead, he and the plaintiff both went for it. The plaintiff arrived first and gathered the ball, and the defendant attempted a tackle. His foot, however, glanced off the ball on to the plaintiff's leg, and they both fell together. On starting the tackle, the defendant was in a position to reach the ball. Having played in thousands of games, the defendant had never been sent off the field or reprimanded. His Honour Judge Peel, K.C., gave judgment for the plaintiff for the agreed amount—£150 and costs. It is to be noted that participation in a game or sport implies consent to the risk of injury. The leave and licence of the plaintiff may then be pleaded as a defence to an action for assault and battery. The implied consent, however, only extends to risks incidental to an adherence to the rules of the game. If the rules are broken, there is no implied consent to injuries resulting from the infringement.

To-day and Yesterday.

LEGAL CALENDAR.

15 December.—Ralph Rhymer's Chronicle for the 15th December, 1735, ran—

"The Sessions at the Old Bailey ended,
Justice to execute intended,
Where malefactors eighty seven
Were fairly tried, condemned eleven.
To four of whom we wish good journeys,
Two bailiff's followers, two attornies,
Against whom Julian Brown did swear
'Dey wid hym vere abetting and near
Ven Macray rob Dr. Lancaster'
(But for this fact Macray indicted
Was by their perjuries acquitted).
Wreathcock, the chief, a rich attorney,
Moved in arrest of judgment; he
Guilty could not supposed be
Who willingly himself surrendered
And at the bar his person tendered;
Besides, he was a great way distant
And the evidence was inconsistent.
But ah! how justly is his ruin wrought
Even by the perjury which himself had taught."

Note.—Wreathcock was eventually transported for life.

16 December.—Serjeant Vernon became a Baron of the Exchequer in November, 1627, and a Justice of the Common Pleas three and a half years later. He died on the 16th December, 1639, at his chambers in Serjeants' Inn. He was buried in the Temple Church. A brother judge described him as "a man of great reading in the statute and common law and of extraordinary memory."

17 December.—On the 17th December, 1734, "a cause was tried at Guildhall in the Common Pleas between Mr. Hall, plaintiff, and the Governor and Company of the Royal Exchange Insurance, defendants, relating to a breach of covenants in a policy for insuring £500 on the ship 'Eyles' from her first arrival at Madeira to London. But it appearing that the said ship after her arrival at Madeira sailed to Bengal and was lost coming out of the river there, the plaintiff, having exceeded the bounds of the insurance, was non-suited."

18 December.—On the 18th December, 1780, "the Lord Chancellor sat at Lincoln's Inn Hall to hear the revived motion on the part of Mr. Morris to set aside an order granted in the Chancellorship of Lord Bathurst to bring in the body of Miss Harford with whom he had eloped in her infancy and also a subsequent order to arrest his person for contempt in not obeying the former order. His lordship discharged the application, leaving the young lady's friends to proceed in the best manner they can to restore her to that respect and happiness of which, he said, she had been cruelly deprived."

19 December.—On the 19th December, 1738, "John Buchanan, a sailor, condemned at the Admiralty Sessions for the murder of Mr. Smith in China, was hanged at Execution Dock, but after a few minutes was cut down by a gang of sailors and carried off in a boat and was brought to life but retaken. The compassion thus shown this criminal by his brother tars is said to arise from his good character and being without cause more severely beat by Smith, who was a petty officer, than any Englishman ought to bear without resenting."

20 December.—Gray's Inn Hall, now so sad a ruin, saw a glorious night on the 20th December, 1594, when there opened the great revels known as the "Gesta Grayorum." Henry Hulme, a young member chosen for his fine appearance and accomplishments in dancing and revelling, played the part of "The High and Mighty Prince Henry, Prince of Purpoole, Archduke of Stapulia and Bernardia, Duke of High and Nether Holborn, Marquis of St. Giles and Tottenham, Count Palatine of Bloomsbury and Clerkenwell, Great Lord of the Cantons of Islington, Kentish Town, Paddington and Knightsbridge, Knight of the Most Heroical Order of the Helmet." With his train he marched from his lodging to the Hall and took his place on a throne beneath a rich cloth of state, while his great lords and councillors stood about him. The festivals lasted for several days for "besides the daily revels and such like sports which were usual there were intended divers grand nights for the entertainment of strangers."

21 December.—Thomas Barkwith was an accomplished young man, handsome, charming, well-mannered, a fine conversationalist, with a delightful literary style and a mastery of Greek, Latin, French and Italian. When he came up from the Isle of Ely to stay with an aunt in London, all her circle were so enchanted with him that they persuaded him to settle in the metropolis. He was recommended to an eminent Master in Chancery, who engaged him to deal with

the financial side of his business, and was so pleased with his service that he trusted him implicitly. Everyone predicted a brilliant future for him, when he had the misfortune to fall passionately in love with a young lady, who led him on without returning his affection, making him neglect his work and launch into all sorts of extravagant expenses far beyond his means. Valuable presents to her and constant visits to theatres and assemblies soon brought him into desperate straits and he embezzled a large sum of his employer's money. Dismissed from his service he tried to set up as a lawyer on his own account, but still neglected business to pursue his love. At last, in despair, he held up a gentleman's coach on Hounslow Heath. The fruits of his robbery were less than twenty shillings, but he was pursued and caught. He was hanged at Tyburn on the 21st December, 1739.

PAPER WASTE.

At the Manchester Assizes Mr. Justice Croom-Johnson condemned waste of paper in pleadings; in one case he had noticed five complete blank sheets and some pages contained nothing but names of counsel. From this point of view it is well that Chancery pleading has so long been pruned of its redundancies. The old "Bill in Chancery" was generally an enormous screed setting out the suitor's wrongs at great length, together with the transgressions committed by the defendants. This Bill was then turned into "interrogatories" to be answered by the defendants on oath, each statement being turned into a searching question; the rough draft was usually prepared by the clerk of junior counsel and the result was often curious. There is a story of a "Cross Bill" filed on behalf of a trustee, sued by a married woman, who had prevailed upon him to allow trust money, which she was restrained from anticipating to be advanced to her husband, ostensibly to save him from bankruptcy. Part of the interrogatories prepared by the clerk went like this: "Did not the defendant fall down on her knees or on one and which of them and implore the plaintiff with tears in her eyes and in one and which of them to advance the said sum of £—— or some other and what sum to her husband to save him from bankruptcy and their children from ruin or how otherwise?" It is said that one junior once bet another that if a few lines of "Paradise Lost" were interpolated into a Bill his clerk would turn them into interrogatories without flinching. This is what resulted: "Was it man's first or some other and what disobedience, and the fruit of that forbidden or some other and what tree, whose mortal taste brought death into this or some other and what world and all our woe, and if not why not or how otherwise?"

Books Received.

The Law and Practice of War Damage Compensation. By HAROLD B. WILLIAMS, LL.D., of the Middle Temple, Barrister-at-Law, and MONTAGU EVANS, M.C., F.S.I., F.A.I., M.Inst.R.A. 1941. Demy 8vo. pp. 416 (including Index). Cambridge: W. Heffer & Sons, Ltd. 21s. net.

Mews' Digest of English Case Law. Quarterly Issue. October, 1941. By G. T. WHITFIELD HAYES, Barrister-at-Law. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. Annual Subscription £1 7s. 6d.

Loose-leaf War Legislation. Edited by JOHN BURKE, Barrister-at-Law. 1941–42 Volume, Pts. 5 and 6. London: Hamish Hamilton (Law Books), Ltd.

Law for the Medical Practitioner. By D. HARCOURT KITCHIN, of the South-Eastern Circuit, Barrister-at-Law. 1941. Demy 8vo. pp. vi and (including Index) 376. London: Eyre & Spottiswoode (Publishers), Ltd. 15s. net.

Palmer's Private Companies. By J. CHARLESWORTH, LL.D., of Lincoln's Inn, Barrister-at-Law. Thirty-eighth Edition. 1941. pp. vii and (including Index) 104. London: Stevens & Sons, Ltd. 2s. 6d. net.

Students' Law of Conveyancing in British India. By S. K. DUTT. 1941. Medium 8vo. pp. viii and (including Index) 391. Allahabad (India): Universal Law House. Rs.7, net.

Obituary.

MR. W. H. GOVER.

Mr. William Henry Gover, barrister-at-law, died on Friday, 12th December. He was called by Lincoln's Inn in 1874.

MR. R. H. HODGE.

Mr. Richard Henry Hodge, barrister-at-law, and Bencher of Lincoln's Inn, died on Sunday, 7th December, aged seventy-three. He was called by Lincoln's Inn in 1893.

Notes of Cases.

CHANCERY DIVISION.

In re **de Barbe: Ellissen** *v.* **Griffiths.**

Uthwatt, J. 16th October, 1941.

Practice—Will—Construction—Enemy possibly interested in testator's estate—Substituted service impossible—Vesting of interest in Custodian of Enemy Property.

Adjourned summons.

This summons was taken out by one of the executors of the will of the testatrix, who died on the 3rd May, 1940, for the construction of her will and two codicils. The pecuniary legatees, the next of kin of the testatrix and E, a German national resident in Germany, the residuary legatee under the will, were defendants to the summons. The principal question raised by the summons was whether the residuary gift contained in the will in favour of E had been revoked by the second codicil. E was not before the court as it had been impossible to serve him. The plaintiff had applied to the Board of Trade and the Custodian of Enemy Property for an order under the Trading with the Enemy Act, 1939, vesting E's interest (if any) in the Custodian, but an order had been refused as it was the policy of the Board and of the Custodian to refuse a vesting order in respect of an interest which was speculative. The learned judge was asked to deal with the matter in the absence of E to the extent at least of permitting the payment of pecuniary legacies.

UTHWATT, J., while standing the case over with liberty to apply to restore, directed the executors to take all proper steps to persuade the Board of Trade to make an order vesting in the Custodian of Enemy Property such rights as E might possess under the will and codicils. He then said that it appeared to him to be ridiculous that the administration of an estate should be held up, and British subjects within the jurisdiction deprived of the benefit of the property which they claimed by reason of inaction on the part of a Government Department charged, not only with the power but with the duty, of vesting in the Custodian of Enemy Property the rights of enemy aliens. He had not the slightest knowledge what were the reasons which might animate it in refusing to make an order, but its own convenience was not a reason which it was entitled to take into account. What must be considered were the rights of the parties in this country and the due administration of justice. The matter of service against persons who were resident in enemy countries, whether they were enemy aliens at common law or statutory aliens by reason of the Trading with the Enemy Act, 1939, had become critical. The Court of Appeal, following the decision of the court in *Porter* v. *Freudenberg* [1915] 1 K.B. 857, had recently indicated that, unless the substituted service could be given in a form which had some reasonable chance of giving knowledge of the proceedings to the defendant, no order for substituted service ought to be made (*In re an Intended Action between V. L. Churchill & Co., Ltd., and Johan Lomberg*, 85 SOL. J. 377; [1941] W.N. 195). The result was in many cases that British subjects could not get their rights ascertained as against enemy aliens, though it might be essential in their interests that those rights should be ascertained. The courts could not make the law, and in that class of case legislation might be necessary, but the case, with which he had to deal, of action by a Government Department in respect of a problem which had been committed to it, could be dealt with. In those circumstances, he must require the plaintiff to apply to the Board of Trade.

COUNSEL: *Armitage*, for the plaintiff, the executor; *Romer*, K.C., and *Droop*, for the first defendant; *Vaisey*, K.C., and *R. Goff*, for the second defendant; *J. V. Nesbitt*, for the third defendant.

SOLICITORS: *Walker, Martineau & Co.; Cohen & Cohen; Garrard, Wolfe, Gaze & Clarke.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re **Best's Marriage Settlement; Belk** *v.* **Best.**

Bennett, J. 27th October, 1941.

Settlement—Annuity of such a sum "as shall after all deductions" amount to £300—Whether annuity payable free of income tax.

Adjourned summons.

By a marriage settlement dated the 25th September, 1935, the husband covenanted that his personal representatives would pay to the trustees, if the wife should survive him, the sum of £5,000. The trustees were directed to hold this sum and the investments representing it upon trust to pay to the wife out of the income of the fund and from time to time by sale of such part of the investments comprising the trust fund as should be necessary, until the trust fund should be exhausted, such a sum as should "after all deductions amount to £300 per annum." The husband having died, this summons was taken out by the trustees of the settlement to determine whether the widow was entitled to be paid the £300 annuity free of income tax.

BENNETT, J., said that the answer to the question depended upon the meaning to be given to the word "deductions." It was well established that in testamentary documents a provision for the payment of a yearly sum "free of all deductions" or of a clear yearly sum of some fixed amount did not free the donee from having to pay income tax on the gift (*In re Loveless; Farrer* v. *Loveless* [1918] 2 Ch. 1). The question was whether in the present instrument there was a context

which enabled the court to say that on the language of the gift the parties meant the term "deductions" to extend to and include income tax. In *In re Cowlishaw; Cowlishaw* v. *Cowlishaw* [1939] Ch. 654, he, the learned judge, had come to the conclusion upon the construction of that will that the words "free of all deductions" meant that the annuity in question was to be paid free of all duties. It was upon the context that he had reached that conclusion. Here it might be said that the periodical cost of realising capital to discharge the annuity was an expense which should be deducted from the annuity unless the word "deductions" had been used. It thus being possible to put some meaning on the word "deductions," on the authorities he was bound to hold that in this case it was the duty of the trustees, when paying the annuity, to deduct income tax.

COUNSEL: *H. Rose; H. Lightman; R. Goff.*

SOLICITORS: *Bentleys, Stokes & Lowless*, for *Belk & Smith*, Middlesbrough; *Maples, Teesdale & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Smart Brothers, Ltd. *v.* Ross.

Uthwatt, J. 30th October, 1941.

Emergency legislation—Hire-purchase agreement—Hirer in arrears with instalments—Hirer agrees to surrender chattels in consideration of cash payment—Whether leave of the court necessary to enforcement of new agreement—Courts (Emergency Powers) Act, 1939 (2 & 3 *Geo.* 6, *c.* 67), *s.* 1 (2).

Adjourned summons.

By a hire-purchase agreement dated the 3rd September, 1938, the plaintiff company agreed to sell certain furniture to the defendant for £52 3s. 6d. The agreement contained the usual provisions for payment by instalments and for the plaintiffs repossessing themselves of the goods on breach of any of the terms of the agreement. The furniture was duly delivered and instalments regularly paid amounting in all to £34. The defendant then, owing to illness, became unemployed and fell into arrears with the instalments. The plaintiffs gave her considerable time in which to pay. In June the defendant wrote to the plaintiffs asking them if they would take the furniture back and give her a small allowance. The plaintiffs wrote agreeing to retake the furniture and to pay to her £10. This offer was accepted. The plaintiffs then took out this summons asking whether they were at liberty, without obtaining the leave of the court under the Courts (Emergency Powers) Act, 1939, to resume possession of the furniture comprised in the hire-purchase agreement.

UTHWATT, J., said that the first move in the matter of getting rid of the hire-purchase agreement had come from the defendant, and it was clear on the evidence that the plaintiffs had not been pressing for the return of the goods and had made no threat to retake possession under the hire-purchase agreement. Apart from the provisions of the Act, the defendant was free to make an effective bargain and she knew what she was doing. The question was whether in the light of *Soho Syndicate, Ltd.* v. *E. Pollard & Co.* [1940] Ch. 638, and *Bowmaker, Ltd.* v. *Tabor* [1941] W.N. 101, effect could be given to that bargain, or whether it was invalid having regard to considerations of public policy. In his opinion these decisions only decided that directly or indirectly no consent and no contract on the part of a hirer could get rid of the necessity of going to the court before exercising any remedy within s. 1 (2) of the Act. Neither in form nor in substance was the agreement of June with the defendant directed to avoid the provisions of the Act. It was in substance a bargain made by the defendant in virtue of her interest in the goods and no consideration of public policy required that full effect should not be given to it. The plaintiffs were accordingly entitled on payment of the £10 to take possession of the furniture.

COUNSEL: *A. A. Pereira; A. C. Longland.*

SOLICITORS: *Tudor & Rowe.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Tankard; Tankard *v.* Midland Bank Executor and Trustee Company, Ltd.

Uthwatt, J. 5th November, 1941.

Administration—Will contains power to postpone sale of residue—Debts not paid within one year of death—Shares subsequently sold at a loss to pay debts—Whether executor liable for loss—Devastavit.

Witness action.

The testator, after appointing the defendants, a trust corporation, to be his executors, gave his residuary estate to the defendants upon the usual trusts for sale and conversion and to hold the residue upon trust for the plaintiffs, his widow and children. The will expressly empowered the defendants to retain any part of the estate in the form of investment existing at the testator's death as they in their absolute discretion might think fit. The testator died on the 21st September, 1938. The estate was valued for estate duty at over £39,000. The estate included 6,000 shares in P, Ltd., which were charged to the M Bank to secure £9,147. The shares were valued for probate at 33s. 9d. a share. Various other debts were owing, but no complaint was made with regard to these. The debt to the bank was reduced by £2,000 within one year from the testator's death. In this year the P shares varied in price from 40s. 6d. to 25s. 3d. Between October, 1939, and March, 1941, the balance of the debt to the bank was discharged by the realisation of P shares. These shares were sold for slightly less than 20s. a share. In this action the plaintiffs, being the beneficiaries entitled to the residuary estate, claimed damages for *devastavit*. They alleged that it was the duty of the defendants to sell sufficient assets to clear the estate of debts within one year of the testator's death and their failure in this duty had resulted in the sale of the P shares at greatly reduced prices.

UTHWATT, J., said that apart from any provisions contained in the will of the testator, which expressly or impliedly dealt with the payment of debts, it was the duty of executors as a matter of the due administration of the estate to pay the debts of the testator with due diligence, having regard to the assets in their hands properly applicable for that purpose, and in determining whether due diligence had been shown regard must be had to all the circumstances of the case. This duty was owed not only to executors, but also to beneficiaries. Where the debt was an interest-bearing debt the duty to pay so as to relieve the estate of the burden of interest was clear (*Hall* v. *Hallett*, 1 Cox Ch. C 134). Where the debt did not carry interest, there might still be a loss to the estate. The question, however, whether damage had in fact resulted to the estate from non-payment of a particular debt was independent of the question whether there had been maladministration involved in non-payment. In a proper case the court could make a declaration as to the breach of duty by the executor and direct an inquiry as to damages (*In re Stevens; Cooke* v. *Stevens* [1898] 1 Ch. 162). There was no rule of law that it was the duty of executors to pay debts within a year from the testator's death. The duty was to pay with due diligence, which might require that debts should be paid before the expiration of the year. However, if debts were not paid within a year, the onus was thrown on the executors to justify the delay (*Grayburn* v. *Clarkson*, 3 Ch. App. 605). As against creditors, the provisions of the testator's will bearing upon the payment were irrelevant. Beneficiaries took their interest under the will, and as against them full effect had to be given to any provision modifying the executors' duty of paying debts with due diligence. In the present case the power to retain assets was relied upon. That power was applicable to all the assets. Assets as respects which the power had been duly exercised were excluded from the assets which, so far as the beneficiaries were concerned, had to be applied in payment of debts. He was satisfied that the defendants had duly exercised their power of retention under the will. The result had been unfortunate to the estate, but their liability did not depend upon results. The action accordingly failed.

COUNSEL: *Daynes*, K.C., and *Donald Cohen*; *Harman*, K.C., and *Pascoe Hayward.*

SOLICITORS: *Church, Adams, Tatham & Co.*, for *Day & Yewdall*, Leeds; *Coward, Chance & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

London Co-operative Society, Ltd. *v.* Southern Essex Assessment Committee.

Viscount Caldecote, C.J., and Tucker, J. 22nd July, 1941.

Rating and valuation—Industrial hereditament—Laundry—Canteen for use of employees—Whether part of hereditament for de-rating purposes—Factory and Workshop Act, 1901 (1 *Edw.* 7, *c.* 22), *s.* 149 (4)—*Rating and Valuation (Apportionment) Act*, 1928 (18 & 19 *Geo.* 5, *c.* 44), *ss.* 3, 4 (2).

Appeal by case stated from a decision of Essex Quarter Sessions.

London Co-operative Society, Ltd., were the occupiers of premises used as a laundry in the borough of Romford. The laundry was built in 1938, the society having claimed that it was an industrial hereditament for the purposes of the Rating and Valuation (Apportionment) Act, 1928, and the Local Government Act, 1929, the question arose whether a canteen forming part of it was used for industrial or non-industrial purposes. The laundry was comparatively isolated and nearly a mile from the centre of Romford, although connected with it by frequent omnibus services. There were no suitable restaurant facilities nearer to the laundry than Romford. The society, therefore, included the canteen in the laundry for the welfare of its staff, in particular as the journey to Romford and back, besides being inconvenient, would take up a considerable part of the hour allowed to employees for lunch. The canteen was used only for supplying hot meals and light refreshments to those employed at the laundry. All the food supplied had to be purchased by those using the canteen, and the purchases ranked for such dividends as were paid in respect of purchases at the society's shops. The canteen was not run with a view to profit. The society contended that the canteen was occupied and used for industrial purposes within the meaning of s. 4 of the Act of 1928. The assessment committee contended that it was used for purposes other than industrial purposes, in particular for the purposes of a retail shop. Quarter sessions decided in favour of the contention of the assessment committee. The society appealed. Section 3 of the Rating and Valuation (Apportionment) Act, 1928, provides that the expression "industrial hereditament" "does not include a hereditament occupied . . . as a factory . . . if it is primarily occupied . . . for . . . (*b*) the purposes of a retail shop." By s. 4 (2) " . . . (*a*) The hereditament shall be deemed to be occupied . . . for industrial purposes except in so far as any part thereof is, under . . . the enactments relating to . . . factories . . . to be deemed neither to be, nor to form part of, a . . . factory . . . " By s. 149 (4) of the Factory and Workshop Act, 1901,

"Where a place situate within the . . . precincts forming a factory . . . is solely used for some purpose other than the manufacturing process . . . carried on in the factory . . . that place shall not be deemed to form part of the factory . . . "

VISCOUNT CALDECOTE, C.J., said that in *Cardiff Revenue Officer* v. *Cardiff Assessment Committee* [1931] 1 K.B. 47, Talbot, J., said that neither he nor Avory, J., intended to say that a mess-room or cook-house necessarily came outside the industrial part of a building. He (the Lord Chief Justice) read these words as referring also to a canteen; and Talbot, J., had added: "Whether they do or not must"—some of the reports said "may"—"depend upon the persons for whose accommodation they are provided and used: according to whether they relate to the industrial part, the factory proper . . . or to the clerical . . . part." Clearly, therefore, where there were an industrial and a non-industrial part to a hereditament, the part to which the messing-place was attached would determine the character of that place. Here the premises were all industrial apart from the canteen, and the conclusion at which he (his lordship) had arrived after some hesitation about whether the question should be dealt with as one of fact was that quarter sessions were wrong. Applying Talbot, J.'s, remarks to up-to-date considerations relating to the equipment and lay-out of a factory, this canteen was not a place used solely for some purpose other than a manufacturing process. His (his lordship's) view was limited to the facts of the case. It was useless to say that it was limited to canteens, for it might assist in determining the character of such parts of a factory as a lavatory, a cloak-room or a first-aid room. If the present decision was relevant to such cases on the facts, it would be applied. The appeal would be allowed.

TUCKER, J., agreed.

COUNSEL: *H. B. Williams; A. H. Forbes.*

SOLICITORS: *Fletcher, Liddle & Co.; Blundell, Baker & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Parliamentary News.

ROYAL ASSENT.

The following Bill received the Royal Assent on the 10th December:—
Arthur Jenkins Indemnity.

PROGRESS OF BILLS.

HOUSE OF LORDS.

Expiring Laws Continuance Bill [H.C.]
Reported, without Amendment. [16th December.

India (Federal Court Judges) Bill [H.L.].
Read Second Time. [16th December.

HOUSE OF COMMONS.

War Orphans Bill [H.C.].
Read First Time. [10th December.

National Service Bill [H.C.].
Read Third Time. [11th December.

Patents and Designs Bill [H.L.].
Read First Time. [11th December.

Education (Scotland) Bill [H.C.]
Read Second Time. [16th December.

War Legislation.

STATUTORY RULES AND ORDERS, 1941.

No. 1902. **Aliens** (No. 2) Order in Council, Nov. 27.

E.P. 1914. **Civil Defence** (Employment and Offences) (No. 6) Order, Nov. 14.

E.P. 1884. **Conditions of Employment** and National Arbitration (Amendment) Order, Nov. 14.

E.P. 1879. **Control of Paper** (No. 37) Order, Nov. 28.

No. 1968. **Customs.** Export of Goods (Control) (No. 39) Order, 1941. Exportation Rule, Dec. 8, revoking certain licences.

No. 1875. Customs. Import Duties (Drawback) (No. 1) Order, Nov. 25.

E.P. 1890. **Defence** (Finance) (Definition of Sterling Area) (No. 5) Order, Nov. 28.

E.P. 1896. Defence (General) Regulations, 1939. Order in Council, Nov. 28, adding reg. 58AC.

E.P. 1900. Defence (General) Regulations, 1939. Order in Council, Nov. 27, amending reg. 29B.

E.P. 1899. Defence (General) Regulations, 1939. Order in Council, Nov. 27, adding Reg. 60HA and amending Regs. 16, 23AD, 33A, 58A and 63.

E.P. 1916. Defence (General) Regulations (Isle of Man), 1939. Order in Council, Nov. 27, adding Regs. 44B and 44C.

E.P. 1981. Defence (General) Regulations, 1939. Order in Council, Dec. 9, amending regs. 55 and 62C, adding reg. 93A and revoking the existing regs. 62BB and 93A and the 5th Schedule.

E.P. 1901. Defence (Weights and Measures) (Comparison of Standards) Regulations, 1941. Order in Council, Nov. 27.

E.P. 1957. **Delegation of Emergency Powers** (Northern Ireland) (No. 4) Order, Nov. 30.

E.P. 1880. **Emergency Powers** (Defence) Road Vehicles and Drivers (Amendment) (No. 2) Order, Nov. 18.

No. 1886. **Export of Goods** (Control) (No. 41) Order, Nov. 27.

E.P. 1887. **Food Control Committees** (Licensing of Establishments) Order, Nov. 25.

E.P. 1921. Food (Points Rationing) Order, 1941. Directions, Nov. 28.

E.P. 1958. Food (Restriction on Dealings) Order, 1941. Order, Dec. 4.

E.P. 1971. Food Transport Order, 1941. Directions, Dec. 6.

E.P. 1920. **Fuel and Lighting** (Coal) Order, Nov. 26.

No. 1969. **Import of Goods** (Control) Order, 1941. Revocation Order, Dec. 8.

E.P. 1927. **Limitation of Supplies** (Cloth and Apparel) Order, 1941. General Licence; Nov. 29, re Footwear.

E.P. 1945. Limitation of Supplies (Cloth and Apparel) Order, 1941. General Licence, Nov. 29, re Supply of Controlled Goods of Class E.

E.P. 1813. Limitation of Supplies (Misc.) (No. 13) Order, Nov. 28.

E.P. 1963. Limitation of Supplies (Misc. General Licence, Dec. 1.

E.P. 1944. Limitation of Supplies (Misc.) (No. 11) Order, 1941, and Limitation of Supplies (Cloth and Apparel) Order, 1941. Revocation of General Licence, Nov. 29.

E.P. 1933. **Location of Retail Businesses** (No. 2) Order, Dec. 5.

No. 1956. **Merchant Shipping.** Compensation to Seamen (War Damage to Effects) Scheme, Nov. 29.

E.P. 1966. **Motor Vehicles** (Returns of Spare Parts, etc.) Order, Nov. 28.

No. 1898. **National Service** (Isle of Man) Order in Council, Nov. 27.

No. 1826. **Railway.** Owner's Risk Rates. Order, Oct. 21.

No. 1918/L.34. **Supreme Court,** England. Procedure. Rules of the Supreme Court (No. 7), Nov. 25.

No. 1909. Supreme Court, Northern Ireland. Winter Assize Order, Nov. 10.

No. 1882. **Trading with the Enemy** (Custodian) (Amendment) (No. 3) Order, Nov. 26.

No. 1883. Trading with the Enemy (Specified Persons) (Amendment) (No. 19) Order, Dec. 5.

No. 1973. Trading with the Enemy (Specified Persons) (No. 20) Order, Dec. 8.

STATIONERY OFFICE.

List of Statutory Rules and Orders, Nov. 1 to 30, 1941.

Notes and News.

Honours and Appointments.

The Lord Chancellor has issued the following Order, which comes into operation on the 1st January next:—

His Honour Judge HURST shall cease to be the Judge of the Districts of Banbury, Chipping Norton, and Shipston-on-Stour County Courts, and His Honour Judge FORBES shall be the Judge of the said Districts in addition to the Districts of which he is now the Judge.

The Colonial Legal Service announce that Mr. L. A. MCCORMACK has been appointed Resident Magistrate, Jamaica.

Mr. L. R. DUNNE, magistrate at Marylebone Police Court, has been transferred to Bow Street to succeed Mr. T. W. Fry, who has retired. He will sit at Bow Street from 22nd December.

Notes.

From 5th January, 1942, the Ministry of Health has made arrangements under which employers may apply for permission to stamp employees' contribution cards half-yearly instead of weekly. The employer will pay to the Ministry weekly, quarterly or half-yearly in advance according to his option the amounts of the contributions due, and will, on application to the Ministry on or before the beginning of the last week in each half-year be supplied with the stamps necessary to stamp the cards of his employees. Special high value stamps representing thirteen, eight and two contributions will in general be supplied for this purpose. Full particulars and forms of application for permission to adopt these arrangements may be had on application to A.G.D.3 (Cashier), Ministry of Health, Blackpool, Lancs.

SOLICITORS' BENEVOLENT ASSOCIATION.

The monthly meeting of the directors was held at 60, Carey Street, Chancery Lane, W.C.2, on Wednesday, the 3rd December, 1941. Mr. R. Bullin, T.D., J.P., was in the chair, and the following directors were present: Mr. Gerald Addison (Vice-Chairman), Mr. Ernest E. Bird, Mr. P. D. Botterell, C.B.E., Mr. T. S. Curtis, Mr. P. Stormonth Darling, Mr. Richard Farmer (Chester), Mr. Gerald Keith, O.B.E., Mr. A. F. King-Stephens, Mr. G. F. Pitt-Lewis, Mr. Gerald Russell, Mr. A. M. Welsford and Mr. Henry White (Winchester). Mr. Walter Leslie Farrer and Mr. W. Charles Norton, M.C., London, were elected directors. Grants amounting to £1,265 10s. were made from the general funds, and pensions and grants amounting to £454 were awarded from the Swann Pension Fund to seven beneficiaries. Twelve new members were admitted.